*** THE HON'BLE SRI JUSTICE B. PRAKASH RAO**

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

+ W.P.Nos.16842, 14651 of 2000 and 8551 of 2001

% 21-8-2006

S.Purushotham and 4 others
Petitioners

Vs.

$ The State of A.P. rep. by its
Chief Secretary to the Govt.
G.A.D, A.P. Secretariat,
Hyderabad and 4 others Respondents

! Counsel for the petitioners – Sri Nooty Rammohan Rao

^ Counsel for respondents: Sri M.Surender Rao

Special Government Pleader

< Gist:

>Head Note

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[1] (1995)2 SCC 745)
2(1967 SLR 753)
31998(6)SCC-741
4(1995)1SCC23
5(1999)3 SCC 384
6 (2001) SCC 475
7 (2003) 6 SCC 535

[8] AIR 1967 SC 1889
[9] AIR 1967 SC 52
[10] AIR 1974 (SC) 259
[11] AIR 1999 (SC) 647
[12] 1992 Supp.(1) SCC 548
[13] 1989(4) SCC 187
[14] 2000(9) SCC 572
[15] AIR 2000 SC 498
[16] AIR 1971 SC 2399
[17] 1973 (2) SCC 705
[18] 2001(4) ALD 153
[19] 2004(2) ALD 1 (Larger Bench)
[20] (1997)9SCC 509
[21] (2002) 4 SCC 510
[22] (1967) 2 SCR 29
[23] 1989 Supp (2) SCC 364
[24] 1993 Supp (4) SCC 473
[25] 1998) 2 SCC 198
[26] (2003) 3 SCC 541
[27] (2006)2 SCC 482
[28] 1981(4) SCC 130
[29] 1990(2) SCC 228
[30] (1975) 3 SCC 76
[31] (1991) 1 SCC 505
[32] (1982) 3 SCC 24
[33] (1981) 1 SCC 722
[34] (1974)4 SCC 3
[35] (1978)1 SCC 248
[36] (1979) 3 SCC 489
[37] (2002) 4 SCC 34
[38] (2002(2)SCALE 367
[39] AIR 1995 SC 2114
[40] (2000) 8 SCC 633
[41] (2002) 2 SCC 188
[42] 1996(10)SCC 304
[43] 2003(12)SCC 68
[44] 2006(3) SCC 434
[45] (1982) 3 SCC 191
[46] 1992 Supp (2) SCC 318
[47] AIR 1968 SC 647
[48] AIR 1990 SC A.P. 171
[49] 2004(8) SCC 579
[50] 2003(11) SCC 584
[51] 2004(3) SCC 75

THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.No.16842, 14651 of 2000 and 8551 of 2001

COMMON ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

Aggrieved by the order of the Tribunal, in O.A.Nos.5698 and 5904 of 1999 dated 14.02.2000, W.P.Nos.16842 of 2000 and 8551 of 2001 are filed by the Section Officers of different departments of the Government of A.P. W.P.No.14651 of 2000 is filed by the State of Andhra Pradesh aggrieved by the orders of the Tribunal in these O.As. In the aforesaid two O.As, the orders of the Government in G.O.Ms.No.368 General Administration (Ser.B) Department dated 18.8.1999, and G.O.Ms.No.397, General Administration (Ser.V)

Department dated 20.9.1999, were under challenge, by the Private Secretaries of the Secretaries to the Government, as arbitrary, illegal and in violation of Articles 14, 16 and 21 of the Constitution of India. The dispute, between the Section Officers and the Private Secretaries to the Secretaries to the Government, revolves around the criteria prescribed and the restrictions imposed for promotion to the posts of Assistant Secretaries to the Government.

For better appreciation of the origin of the present litigation, it is necessary to refer to the relevant rules and other applicable provisions. In exercise of the powers conferred under the proviso to Article 309 of the Constitution of India, the Andhra Pradesh Secretariat Service Rules were made and notified in G.O.Ms.No.445, General Administration (Services-B) dated 29.10.1998 (hereinafter referred to as the '1998 Rules'). Rule 2 thereof relates to the constitution of the service and amongst the categories of posts which constitute the A.P. Secretariat Service, under Class-A Category (1)(d) are the Additional Secretaries to the Government (Non-Cadre) other than in the Law and Finance & Planning (Finance) Department; under Class B Category 1(c) are the Joint Secretaries to the Government (Non-Cadre) other than Law and Finance & Planning (Finance) Department, under Category 3(c) are the Deputy secretaries to the Government (Non-cadre) other than Law and Finance and Planning (Finance) Departments and under Category 4(c) are the Assistant Secretaries to the Government other than Law and Finance and Planning (Finance) Department. While Section Officers, parties to the present dispute, fall under Class-B Category 7(c) of Rule 2 of the 1998 Rules, the Private Secretaries to the Secretaries to the

Government fall under Category 9. Rule 3 prescribes the method of appointment. The channel of promotion, to the non-cadre posts of Additional Secretary, Joint Secretary, Deputy Secretary and Assistant Secretary to the Government, is as under:

Additional Secretary to Government (Non-Cadre) other than in the law and Finance and Planning (Finance) Departments	By promotion of Joint Secretary to Government (Non-Cadre) in the Departments of Secretariat other than Law and Finance and Planning (Finance) Departments.
Joint Secretary to Government (Non-Cadre) in the Departments of Secretariat other than Law and Finance and Planning (Finance) Departments	By promotion of Deputy Secretary to Government (Non-Cadre), in the Departments of Secretariat other than the Law and Finance and Planning (Finance) Department
Deputy Secretary to Government (Non-Cadre) in Departments of Secretariat, other than Law and Finance and Planning (Finance) Departments	(i) By promotion of Assistant Secretary to Government in the Departments of Secretariat other than Law and Finance and Planning (Finance) Department (ii) By transfer on tenure from any other service, subject to Note 8 below
Assistant Secretary to Government in the Departments of Secretariat other than Law and Finance and Planning (Finance) Department	(i) By promotion of Section Officer (SC), Section Officers and Private Secretaries to Secretaries to Government. (ii) By transfer on tenure of a Special Grade Deputy Collector of the Revenue Department for one post in the Revenue Department of the Andhra Pradesh Secretariat (iii) By promotion of Accounts Officers (iv) If the State Government so direct by transfer from among full members and approved probationers of any other service which the State Government may specify

Note 3 to Rule 3 reads thus:-

"The cases of Private Secretaries to Secretaries to Government (including Private Secretary/Special Secretary/Ex.Officio Secretary to Government) who are found suitable at the end of two yeas training as Section Officers shall be considered for appointment as Assistant Secretary to Government in the Departments of Secretariat in each unit of appointment along with the Section Officers including Section Officers (SC) in the ratio of 1:19 in a unit of 20 vacancies, the first vacancy to be filled by the Private Secretary and the remaining 19 vacancies by the Section Officers including Section Officers (SC)."

In so far as appointment to the post of Assistant Secretary to the Government is concerned it is by promotion of Section Officer and Private Secretaries to the Secretaries to the Government. The 1998 rules prescribed a ratio of 1:19, between these two feeder categories of Private Secretaries and Section Officers, for appointment by promotion to the post of Assistant Secretary to the Government.

On receipt of representations from the A.P. Secretariat Association, and the A.P. State Typists and Stenographers Association, to review the ratio and revise the criteria for promotion to the post of Assistant Secretaries with reference to the cadre strength of each of the categories, the matter was placed before the Cabinet Sub-Committee and, after detailed deliberations, the Committee submitted its report to the Government. The Government, after careful examination of the report of the Cabinet Sub-Committee, took note of the fact that the permanent cadre strength of Section Officers was 365 and that of Private Secretaries was 25 and that, at any given point of time, there would be 10 Private Secretaries occupying the posts of Section Officers for the purpose of undergoing training and deducting these 10 posts from the total cadre strength of Section

Officers, the permanent cadre strength of Section Officers would be 355 and that the ratio between Sections Officers and Private Secretaries worked out to 14:1. It was observed that the cadre strength of all Non-Cadre officers, from Assistant Secretary to the Government to Additional Secretary to the Government, except in Law and Finance & Planning (Finance) Department, was 151. The Government decided to accept the recommendations and issued G.O.Ms.No.368 dated 18.8.1999 whereby, based on the permanent cadre strength of both the categories of Section Officers and Private Secretaries to Secretaries to Government, 10 posts were earmarked for promotion, from the category of Private Secretary to the Secretary to the Government, to the category of Assistant Secretary to the Government and upto Additional Secretary to the Government (Non-Cadre). The Government ordered that the number of Private Secretaries to the Secretaries to the Government occupying any of the non-cadre posts of Assistant Secretary or Deputy Secretary or Joint Secretary or Additional Secretary shall not exceed 10 in number at any given point of time. The Government further ordered that promotion, from the category of Private Secretaries to the Secretaries to the Government, to and in the categories of Assistant Secretary to the Government and upto Additional Secretary to the Government shall be limited and confined to 10 posts at any given point of time and that, only on vacation of the post of Assistant Secretary/Deputy Secretary/Joint Secretary/ Additional Secretary by a Private Secretary promotee, the next Private Secretary would be promoted to the feeder post of Assistant Secretary within the said earmarked 10 posts.

The A.P. Secretariat Service Rules 1998, notified in

G.O.Ms.No.445 dated 29.10.1998, was amended and, vide G.O.Ms.No.397, General Administration (Service V) Department dated 20.9.1999, Note (3) of Rule 3 was substituted. Note 3 of Rule 3, as substituted, reads thus:

"The cases of Private Secretaries to Secretaries to Government including Private Secretaries to Chief Secretary/Special Chief Secretary/Principal Secretary/Second Secretary/Special Secretary/Ex-Officio Secretary to Government who are found suitable at the end of two years training as Section Officers shall be considered for appointment as Assistant Secretary to Government in the Departments of Secretariat in each unit of appointment, along with the Section Officers including Section Officers (SC). Promotion from the category of the aforesaid Private Secretaries to the categories of Assistant Secretary to Government and up to the Additional Secretary to Government shall be limited and confined to 10(ten) post only at any given point of time. A Private Secretary shall be promote to the post of Assistant Secretary within the said earmarked 10(ten) posts only on vacation of a post of Assistant Secretary/Deputy Secretary/Joint Secretary/Additional Secretary"

Challenging the Constitutional Validity of the aforesaid amendment, the Private Secretaries to the Government, filed O.A. No. 5698 and 5904 of 1999. The Tribunal, in its order dated 14.02. 2000, held that the Private Secretaries had been reduced to a worse situation when compared to the position existing prior to the issuance of the G.Os i.e., when the ratio of 1:19 existed for promotion to the post of Assistant Secretary from the two feeder categories, that in the first instance only the ratio which worked as a limiting factor in giving representation to both the feeder categories was operated and since the applicants belonged to a lesser group they got lesser number of posts, but under the earlier dispensation no absolute limit was prescribed on the number of posts that could be occupied by the Personal Secretaries to the Secretaries to the Government. The Tribunal held that, while the earlier ratio was operated only for promotion to the post of

Assistant Secretaries, now under the impugned G.O. an absolute limit of 10 posts had been prescribed in all categories, starting from Assistant Secretaries upto Additional Secretaries and, technically, it was possible to deny promotion to an officer who was eligible for promotion to the next higher category on the ground that all the 10 posts had been occupied by the Private Secretaries. The Tribunal held that Private Secretaries could not be discriminated against as a class and once they were promoted to the category of Assistant Secretary, operation of any ratio must be limited to the post of Assistant Secretaries and their future promotion from the Assistant Secretary category should be on the basis of their seniority in the feeder cadre subject to their eligibility and based on their suitability for such promotion. The Tribunal held that it was not proper to restrict their promotion prospects, for posts higher than the posts of Assistant Secretary, on the basis that the quota of posts given to the Private Secretaries had been filled up, that when a ratio is prescribed between two competing feeder categories the ratio should be allowed to operate as a limiting factor for representation of both the feeder categories, that it was not open to the respondents to prescribe a further absolute limit on the number of posts that could be occupied by one feeder category and it was unreasonable to stipulate further that the ratio which was applicable for promotion to the post of Assistant Secretaries should be applied for promotion to higher categories such as Deputy Secretary, Joint Secretary and Additional Secretary to the Government. The Tribunal took note of the fact that promotion to these posts was on the basis of seniority in the feeder category and eligibility and suitability and held that, under the guise of revising the ratio, the respondents had further

restricted the promotional prospects of the applicants and that restrictions, which were not there in the earlier Rules, had been imposed under the impugned G.O. prescribing an absolute maximum number of posts that could be occupied by the applicants and further making such an absolute limit applicable in promotion to higher categories of posts such as Deputy Secretary, Joint Secretary and Additional Secretary. The Tribunal held that no restriction was placed on the other feeder category of Section Officer for promotion to the post of Assistant Secretary and higher posts and that the impugned Government Orders were not in the nature of a progressive measure and imposed an unreasonable restriction on the promotional prospects of the applicants. The Tribunal held that the impugned G.O while apparently providing a higher ratio of 1:14 for the applicants was, in fact, regressive in nature, curtailing the promotional avenues of the applicants not only to the posts of Assistant Secretaries but also to the posts of Deputy Secretaries, Joint Secretaries, and Additional Secretaries and such restrictions had been imposed only on one of the feeder categories on the basis of their birth mark that they belonged to the category of Private Secretaries. The Tribunal held that G.O.Ms.No.397 dated 20.9.1999 and G.O.Ms.No.368 dated 18.8.1999 could not be sustained, except to the extent of prescription of the ratio of 1:14 between the two categories of Private Secretaries and Section Officers for promotion to the post of Assistant Secretary, and that a further restriction on the absolute number of posts that could be held by the Private Secretaries and restricting their promotional chances to higher posts of Deputy Secretary, Joint Secretary and Additional Secretary was unwarranted. The Tribunal held that, once Private

Secretaries entered the stream of Assistant Secretaries, they were entitled to be considered for promotion to the next higher categories on the basis of their seniority in the feeder category, eligibility and suitability and that there was no necessity to lay down any further restrictions in this regard. The Tribunal held that even for the post of Assistant Secretary, the ratio of 1:14 itself would work as a limiting factor on the representation of both the categories and as the applicants belonged to the minor group they would only have lesser number of posts, that there was no necessity to impose any further restrictions with regards the number of posts to be given to the applicants or with regards their promotional prospects to further higher categories and that G.O.Ms.No.368 dated 18.8.1999, except to the extent of prescription of the ratio of 1:14 between Private Secretaries and the Section Officers for promotion to the post of Assistant Secretaries, and G.O.Ms.No.397 dated 20.9.1999 limiting the number of posts to only 10 at any given point of time, in respect of Private Secretaries occupying any of the posts of Assistant Secretaries, Deputy Secretaries, Joint Secretaries or Additional Secretaries to the Government, was not sustainable, was arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India. The said G.Os were accordingly set aside. The Government was directed to follow the formula of 1:14, between Private Secretaries and Section Officers, for promotion to the post of Assistant Secretaries and to consider the case of Private Secretaries in the first vacancy and the case of Section Officers in the other 14 vacancies.

Sri Nooty Rammohan Rao, learned counsel for the petitioners, would submit that, normally, an Assistant Section

Officer puts in a minimum of 15 to 16 years service before he is promoted as a Section Officer and a further 8 to 12 years service as Section Officer before he is promoted to the post of Assistant Secretary, whereas a Private Secretary, under the earlier dispensation, became an Assistant Secretary within 10 years. Learned counsel would submit that what was sought to be restricted by the Rules, in G.O.Ms.No.397 dated 20.9.1999, was entry of Private Secretaries to the next higher categories of posts of Assistant Secretaries, and not the further promotion of those Private Secretaries who had already been promoted as Assistant Secretaries. Learned counsel would submit that the applicants, in both the O.As, were Private Secretaries when the O.As were filed, that it was not as if they had already been promoted as Assistant Secretaries or were espousing the cause of the Assistant Secretaries, that once a person was promoted as an Assistant Secretary his further promotion to the post of Deputy Secretary, Joint Secretary and Additional Secretary was only on the basis of his seniority in each of the feeder categories subject to suitability and eligibility and that no reference was thereafter made to his birth-mark as a Private Secretary. According to the learned counsel it was only for the purpose of promotion to the post of Assistant Secretary was this restriction brought forth by the Rules under G.O.Ms.NO.397 dated 20.9.1999, and the amendment, in effect, was that as long as there were ten persons, in the non-cadre posts of Assistant Secretaries, Deputy Secretaries, Joint Secretaries and Additional Secretaries put together, who initially belonged to the category of Private Secretaries, no further promotions would be effected to the post of Assistant Secretary from the category of Private Secretary. Learned counsel would

submit that the rule only restricts entry of Private Secretaries to the next higher post of Assistant Secretary and once a Private Secretary is promoted as an Assistant Secretary, his further promotion as a Deputy Secretary, Joint Secretary and Additional Secretary is on the basis of his seniority in the cadre of Assistant secretary and the next higher feeder categories respectively, and not with reference to his birth mark as a Private Secretary. Learned counsel would draw support from the judgment of the Apex Court in **R.K. Sabharwal v. State of Punjab**[1] wherein promotion of candidates, belonging to Scheduled Castes and Scheduled Tribes, to higher posts under the reserved category was sought to be restricted in a similar manner. Learned counsel would submit that the Rules, as amended in G.O.Ms.No.397 dated 20.09.1999, is not discriminatory and that it merely identifies the total number of posts to be held by a particular category of employees. Learned counsel would contend that the source from which promotions are to be made and the manner and method of appointment are all matters in the realm of State policy which are neither justiciable nor amenable to judicial review under Article 226 of the Constitution of India. Learned counsel would submit that the birth mark theory, which found favour with the Tribunal, has, in fact, no application.

Sri S. Satyam Reddy, learned counsel for the petitioners in W.P.No.8551 of 2001, would adopt the arguments and, in addition, submit that appointment to 1/3rd of the posts in the I.A.S. cadre is from the State Cadre and, as long as 1/3rd of the total posts in the I.A.S cadre is held from amongst those who originally belonged to the State Cadre, further entry of officers from the State cadre into

the IAS cadre is prohibited and it is only when the total number of posts held by such officers falls below 1/3rd would a proportionate number of officers from the State Cadre be considered for appointment to the IAS cadre.

Learned Special Government Pleader, appearing on behalf of the Learned Advocate General, would submit that G.O.Ms.No.368 dated 18.8.1999 does not prescribe the ratio of 1:14 and that the direction to follow the ratio of 1:14, in effect, amounts to framing of Rules by the Tribunal which is impermissible in law. Learned Special Government Pleader would submit that no employee has an indefeasible right to have his conditions of service remain unchanged, that reduction of chances of promotion is not a condition of service and that no employee can claim that the chances of promotion which he had at the inception should never be changed or reduced subsequently. Learned Special Government Pleader would submit that the Tribunal erred in holding that there was a change in the conditions of service, when, in fact, all that was done was only to limit entry, of Private Secretaries to the Secretaries to the Government, for promotion to the posts of Assistant Secretaries, making it dependent on the number of non-cadre posts already occupied, by employees from the Private Secretaries category, as Assistant Secretaries, Deputy Secretaries, Joint Secretaries and Additional Secretaries to the Government. Learned Special Government Pleader would submit that the conditions prescribed, by the amendment in G.O.Ms.No.397 dated 20.9.1999, is a policy choice of the Government, and unless it is held to be in violation of the fundamental rights guaranteed under Part III of the Constitution of India, the validity of the said Rules cannot be impeached. Learned

Special Government Pleader would contend that the Rules in G.O.Ms. No.397 dated 20.9.1999, made under the Proviso to Article 309 of the Constitution of India, are legislative in character and as such the burden lies heavily on the person who challenges its validity to show that the classification is so arbitrary as to be in violation of Articles 14 and 16 of the Constitution of India. Learned Special Government Pleader would emphasize that as a result of the amendment of the Rules, under G.O.Ms.No.397 dated 20.09.1999, the future entry of employees, from the category of Private Secretaries to the Secretaries to the Government, to the higher post of Assistant Secretaries is restricted and that, on promotion as Assistant Secretaries, they are treated on par with the other Assistant Secretaries, promoted from the category of Section Officers, for being considered for further promotions to the next higher posts of Deputy Secretary and above, and it is only their *inter-se* seniority in the Assistant Secretaries category which is determinative and not their earlier birth mark as a Private Secretary. Learned Special Government Pleader would place reliance on **State of Mysore Vs. G. N. Purohit**[2]**; Union of India Vs. N. Y. Apte**[3]**; Chandra Gupta, I. F. S. Vs. Secretary, Government of India, Ministry of Environment and Forests**[4]**; All India Federation of Central Excise Vs. Union of India**[5]**; Kuldeep Kumar Gupta Vs. Himachal Pradesh State Electricity Board**[6] and **Dwarka Prasad Vs. Union of India**[7].

Sri M. Surender Rao, learned counsel for the respondents, would submit that the impugned amendment, in effect, identifies candidates on the basis of their original birth mark. Learned

counsel would submit that the Rules, as amended under G.O.Ms. No.397 dated 20.9.1999, makes promotion of Private Secretaries, to higher posts of Assistant Secretaries, contingent upon vacation of office by erstwhile Private secretaries holding the posts of Assistant Secretaries, Deputy Secretaries, Joint Secretaries and Additional Secretaries, and that the last four lines of the amendment introduced through Rule 3, in G.O.Ms. No.397 dated 20.9.1999, is arbitrary and in violation of Articles 14 and 16 of the Constitution of India. The relevant portion of Rule 3 reads thus:

"…….A private Secretary shall be promoted as Assistant Secretary within the said earmarked 10 posts only on vacation of a post of Assistant Secretary, Dy. Secretary, Joint Secretary, Additional Secretary"

Learned counsel would submit that since promotion of Private Secretaries, to the posts of Assistant Secretaries, is made contingent on the vacation of the post of Assistant Secretary, Deputy Secretary, Joint Secretary, Additional Secretary, by persons whose birth mark is that of a Private Secretary, the amended Rule is illegal, arbitrary, unreasonable and in violation of Article 14 and 16 of the Constitution of India. Learned counsel would submit that for promotion from the post of Private Secretary to the post of Assistant Secretary, vacancies to be filled up cannot be made contingent upon the birth mark of the person who vacated the post nor can a vacancy be identified as belonging to a particular group or as liable to be filled up by a particular feeder cadre after identifying the birth mark of the person who was holding the higher post earlier. According to the learned Counsel since birth mark is the criteria, either for the purpose of upward movement or for the purpose of identification of vacancy for the purpose of allocation to a particular feeder category, the Rule

which prescribes such a criteria is in violation of Article 14 and 16 of the Constitution of India and the policy of the State in this regard is arbitrary and unreasonable. Learned counsel would rely on **Roshan Lal Tandon v. Union of India**[8], **Mervyn Continho Vs. Collector of Customs, Bombay**[9], **Ramchandra Shankar Deodhar Vs. State**[10] and **State of Punjab Vs. R. N. Bhatnagar**[11]. Learned counsel would submit that when posts in a cadre are filled up from two different sources, and promotees from the two feeder categories enter the higher common cadre, their birth mark disappears and they are integrated in the common cadre. According to the learned Counsel treating a quota rule as a rule of reservation would result in promotees, even after they enter the common cadre through two separate entry points regulating their induction into the cadre, being identified on the basis of their original birth mark. Learned counsel would rely on **All India Federation of Central Excise**[5] in this regard. Learned counsel would submit that identification of vacancies for promotion from a particular feeder category, on the basis that the birth mark of the previous holder of the said post was from the same category, is in violation of Articles 14 and 16 of the Constitution of India. According to the learned Counsel the rule, as notified in G.O.Ms. No.397 dated 20.9.1999, if held to be a quote rule, would nonetheless be arbitrary as a quota can be fixed only in respect of a particularly category of posts and not with reference to several categories of posts clubbed together and that such fixation cannot be termed as a policy evolved by the State. Learned Counsel would submit that even policy decisions, if they are in violation of

Articles 14 and 16 of the Constitution of India, are liable to be struck down, that the impugned Rule, in effect, deprives a particular group of employees of their upward movement (growth) by resorting to or by confining the number of persons entitled to move up the ladder based on an irrational figure and while it may be permissible for a quota to be fixed in respect of or with reference to a particular category, when it is fixed clubbing together four higher categories of posts, it is nothing short of curtailing the upward movement of persons from a particular feeder category and is consequently arbitrary, unreasonable and in violation of Articles 14 and 16 of the Constitution of India.

The Tribunal erred in holding that G.O.Ms. No. 368 dated 18.08.1999 prescribed a ratio of 1:14 between Private Secretaries and Section Officers for promotion to the posts of Assistant Secretaries. The said Government order merely recognised that the cadre strength of all non-cadre officers, from Assistant Secretaries upto Additional Secretaries to the Government (except in Law & Finance and Planning (Finance) Departments), was 151, noted that the permanent cadre strength of Section Officers was 365 and that of Private Secretaries was 25 and that, at any given point of time, there would be 10 Private Secretaries occupying the posts of Section Officers for the purpose of undergoing training. After these 10 posts were deducted as the permanent cadre strength of Section Officers was 355, the ratio of the respective permanent cadre strength of Section Officers and Private Secretaries was 355:25 or 14:1. Since the cadre strength of all non-cadre officers was 151, applying the ratio of 14:1, 10 posts were required to be earmarked to the Private Secretaries channel and the remaining 141 posts to the Section Officers category.

Taking these aspects into consideration, the government decided that earmarking 10 posts for promotion from the category of Private Secretaries to that of Assistant Secretaries to the government would suffice and it was, therefore, ordered that the total number of Private Secretaries to the government, in the non-cadre posts of Assistant Secretaries upto Additional Secretaries to the Government, should be confined to 10 posts. All that G.O.Ms. No. 368 dated 18.8.1999 has done is to limit the total number of non-cadre officers posts, which may be occupied from the Private Secretaries category, to 10 posts. No ratio of 1:14 has either been prescribed in G.O.Ms. No. 368 dated 18.09.1999 or in the rules notified in G.O.Ms. No. 397 dated 20.09.1999. The amendment to the rules, in G.O.Ms. No. 397 dated 20.09.1999, merely limits the total number of posts earmarked for the Private Secretaries stream to 10 posts. The Tribunal not only erred in holding that G.O.Ms. No. 368 dated 18.09.1999 prescribed a ratio of 1:14 between Private Secretaries and Section Officers for promotion to the posts of Assistant Secretaries, it also proceeded on the erroneous premise that G.O.Ms. No. 397 dated 20.09.1999 makes a departure from the executive instructions in G.O.Ms. No. 368 dated 18.08.1999 in limiting the posts only to 10 when a ratio of 1:14 was prescribed earlier. In striking down G.O.Ms. No. 368 dated 18.09.1999, except to the extent of prescription of the ratio of 1:14, the Tribunal, in effect, has now prescribed the ratio of 1:14 between Private Secretaries and Section Officers for promotion to the posts of Assistant Secretaries. It is not for Courts/Tribunals to prescribe the mode and manner of recruitment or the ratio between two feeder groups for promotion to a higher category of posts. Exercise of power to make rules in this regard are matters in the

domain of the rule making authority and not for Courts or Tribunals to prescribe, for it is well settled that a writ of Mandamus cannot be issued to the Legislature to enact a particular law or to the Rule making authority to make rules in a particular manner. (**State of Jammu & Kashmir v. A.R.Zakki**[12]**; Supreme Court Employees Welfare Association v. Union of India**[13]**; State of Karnataka v. State of Andhra Pradesh**[14]**; Indra Sawhney II v. Union of India**[15]**; Narinder Chand Hem Raj v. Lt. Governor**[16]**; Rajinder Singh v. Santa Singh**[17]**; Andhra Bank Scheduled Tribe Employees Welfare Association v. Andhra Bank**[18]**; Ranga Reddy District Sarpanches Association v. Govt. of A.P.**[19]**)

The source of recruitment, the mode and manner in which recruitment should be made and the ratio to be prescribed for promotion etc are all matters of policy for the executive or the rule making authority, in its wisdom, to decide and not for Courts/Tribunals to impose. Whether such a policy choice should be made or not are again matters exclusively in the executive/the rule making authority's realm and unless there is a clear transgression of constitutional provisions, these are areas where Courts/Tribunals are vary of treading into. The wisdom of a policy choice are, as a general rule, not matters of examination by Courts/Tribunals unless the policy decision is demonstrably capricious, arbitrary, not informed by reason or if it suffers from the vice of discrimination or infringes any rule, statute or provisions of the Constitution. (**Krishnan Kakkanth v. Govt. of**

Kerala[20]; **State of H.P. v. Padam Dev,**[21]). In the present case, the Tribunal held that G.O.Ms. No. 368 dated 18.08.1999 was regressive in nature, that it had curtailed the promotional avenues of the applicants not only to the posts of Assistant Secretaries but also to the posts of Deputy Secretaries, Joint Secretaries, and Additional Secretaries and that such restrictions had been imposed only on one of the feeder categories on the basis that their birth mark belonged to Private Secretaries. The Tribunal held that the further restriction on the absolute number of posts that could be held by Private Secretaries, and restricting their promotional chances to higher posts, was unwarranted and that there was no necessity to impose such restrictions. It is not for the Courts/Tribunals to direct or advice the executive/the rule making authority on such matters of policy. Save constitutional or statutory violations, such policy choices are, normally, **"no entry zones"** for Courts/Tribunals.

In **Govind Dattatray Kelkar v. Chief Controller of Imports & Exports**[22], the Supreme Court observed:-

"……The concept of equality in the matter of promotion can be predicated only when the promotees are drawn from the same source. If the preferential treatment of one source in relation to the other is based on the differences between the said two sources, and the said difference have a reasonable relation to the nature of the office or offices to which recruitment is made, the said recruitment can legitimately be sustained on the basis of a valid classification. There can be cases where the differences between the two groups of recruits may not be sufficient to give any preferential treatment to one against the other in the matter of promotions, and, in that event, a court may hold that there is no reasonable nexus between the differences and the recruitment. In short, whether there is a reasonable classification or not depends upon the facts of each case and the circumstances obtaining at the time the recruitment is made. Further, when a State makes a classification between two sources of recruitment, unless the classification is unjust on the face of it, the onus lies upon the party attacking the classification to show by placing the necessary material before the court that the said classification is unreasonable and violative of Article 16 of the

Constitution……

……..**When the recruitment to certain posts is from different sources, what ratio would be adequate and equitable would depend upon the circumstances of each case and the requirements and needs of a particular post. Unless the ratio is so unreasonable as to amount to discrimination, it is not possible for this Court to strike it down or suggest a different ratio.** Nothing has been placed before us to show that the ratio of 3:1 is so flagrant and unreasonable as to compel us to interfere with the order of the Government……" (emphasis supplied)

In **Asif Hameed v. State of J & K**[23]:-

"…… When a State action is challenged, the function of the court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the Constitution and if not, the court must strike down the action. While doing so the court must remain within its self-imposed limits. The court sits in judgment on the action of a coordinate branch of the Government. While exercising power of judicial review of administrative action, the court is not an Appellate Authority. **The Constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers……"(emphasis supplied).**

I n **Indian Rly. Service of Mechanical Engineers Assn. v. Indian Railway Traffic Service Assn.,**[24]:-

"….It is well-settled in law that the Government has got a right to notify the scheme. It has equally a right to issue amendments. Therefore, it could amend the scheme including the provisions relating to the predominant factor from 6 to 37.5%. This is a matter of policy. This Court had taken the view in Union of India v. Tejram Parashramji Bombhate: (1991)3 SCC 11 that no court or tribunal could compel the Government to change its policy involving expenditure……"

In **Govt. of T.N. v. S. Arumugham,**[25]:-

"……The Tribunal itself came to the conclusion that combining all the departments and having a common seniority list was neither justified nor feasible. But it has given directions for a different kind of allocation and a different scheme. These directions pertain to policy matters. **The Tribunal ought not to have directed the Government to change its policy. The**

Government has a right to frame a policy to ensure efficiency and proper administration and to provide suitable channels of promotion to officers working in different departments and offices……. The appellants in their affidavit before the Tribunal have given in detail the history of these provisions and the justification for these provisions in the interests of efficiency and proper administration. **The Tribunal cannot substitute its own views for the views of the Government or direct a new policy based on the Tribunal's view of how the allocation should be made**……. **The quota which should be fixed or the allocation which should be made for the purpose of deputing officers to the Tamil Nadu Revenue Subordinate Service is basically in the domain of the executive. Unless there is a clear violation of any provision of the Constitution, the Tribunal ought not to have given directions for formulating a new policy and a different quota**. …. (emphasis supplied).

Again in **P.M. Latha v. State of Kerala**[26], the Supreme Court held:

"…….**Whether for a particular post, the source of recruitment should be from the candidates with TTC qualification or BEd qualification, is a matter of recruitment policy**. We find sufficient logic and justification in the State prescribing qualification for the post of primary teachers as only TTC and not BEd. Whether BEd qualification can also be prescribed for primary teachers is a question to be considered by the authorities concerned but we cannot consider BEd candidates, for the present vacancies advertised, as eligible……" (emphasis supplied).

Employment under the State is a matter of status and not of contract even though acquisition of such status may be preceded by a contract i.e., the offer of employment and its acceptance. The rights and obligations of a government servant is determined by rules framed by the Government under the proviso to Article 309 and can be altered unilaterally. (**UPSC Vs. Girish Jayanti Lal Vaghela**[27]). As against the earlier ratio of 1:19 the amendment brought forth to the rules, in G.O.Ms. No. 397 dated 20.09.1999, in placing a maximum limit on the number of non-cadre officers posts which can be occupied by the Private Secretaries category as 10, does reduce their chances of

promotion. It is, however, well settled that while a right to be considered for promotion is a term of service, chances of promotion is not. The mere fact that there is a reduction in the chances of promotion does not tantamount to a change in the conditions of service. (**State of Maharashtra Vs. Chandrakant Anant Kulkarni**[28]**; K. Jagadeesan Vs. Union of India**[29] **and N.Y. Apte**[3]).

In **G.N. Purohit**[2], the seniority list of Sanitary Sub-Inspectors and Inspectors was prepared State wise. The cadre of these officers was earlier District wise. The Government of Mysore decided to change the District wise system and substitute it for a State wise system. The contention urged before the Apex Court was that by making the list State Wise persons who had, pursuant to the States Reorganization Act, been allotted to the State of Mysore from the erstwhile State of Bombay, went down heavily in seniority resulting in their chances of promotions being adversely affected, and that it amounted to an alteration of their conditions of service. Rejecting this contention the Supreme Court observed:-

> "…….. It is urged that this has affected their chances of promotion which were protected under the proviso to Section 115(7) of the Act, which lays down that the conditions of service applicable immediately before the appointed day to the case of any person allotted to the new State shall not be varied to his disadvantage except with the previous approval of the Central Government. **It is said on behalf of the respondents that as their chances of promotion have been affected their conditions of service have been changed to their disadvantage. We see no force in this argument because chances of promotion are not conditions of service….." (emphasis supplied).**

In **Ramchandra Shankar Deodhar**[10], a notification was issued, in the erstwhile State of Hyderabad that all vacancies in

the cadre of Deputy Collectors shall be filled only by promotion by selection from the cadre of Tehsildars. Consequent upon States Reorganization, new recruitment rules were made whereunder vacancies in the posts of Deputy Collectors were to be filled up for three sources, (1) 50% by nominations on the basis of the result of competitive examination; (2) 25% by directly recruited Mamlatdars who had put it atleast seven years service and (3) the remaining 25% by Mamlatdars promoted from lower ranks in the Revenue Department. The Division Bench of the Bombay High Court struck down the proviso to the Rule, whereunder half of the vacancies reserved for appointment by promotion were to be filled by directly recruited Mamlatdars who had put it atleast seven years of service, declaring it to be in violation of Article 16 of the Constitution of India. Among the grounds urged before the Supreme Court was that, while earlier all the vacancies in the posts of Deputy Collectors in the Ex-Hyderabad State were available to the Tehsildars, under the new Rules 50% of the vacancies were to be filled by direct recruitment and only the remaining 50% was available for promotion, and that too on divisional basis. This, according to the Tehsildars, varied the conditions of service of the Tehsildars from the erstwhile Hyderabad State to their disadvantage without the previous approval of the Central Government under the proviso to Section 115(7) of the States Reorganization Act 1956 and was therefore null and void. It is in this context that the Supreme Court held:-

"…. **It is now well-settled by the decision of this Court in *State of Mysore* v. *G.B. Purohit*[4] that though a right to be considered for promotion is a condition of service, mere chances of promotion are not. A rule which merely affects chances of promotion cannot be regarded as varying a condition of service……"**

……So far as the question of validity of the second proviso to Rule of

the Rules of July 30, 1959 is concerned, there can be no doubt that the Bombay High Court was right in declaring it to be invalid. **It can hardly be disputed that both the directly recruited Mamlatdars as well as the promotee Mamlatdars form one class. They are both known by the same designation. They have same scales of pay. They discharge the same functions. The posts held by them are interchangeable. There is nothing to show that the two groups are kept apart. Both are merged together in the same class. It is not competent to the Government thereafter to discriminate between directly recruited Mamlatdars and promotee Mamlatdars in the matter of further promotion to the posts of Deputy Collector. That would be violative of Article 16 of the Constitution. This is abundantly clear from the decisions of this Court in Mervyn Coutindo v. Collector of Customs, Bombay: AIR 1967 SC 52 and S.M. Pandit v. State of Gujarat: AIR 1972 SC 252 ……"(emphasis supplied)**

In **Mohd. Shujat Ali v. Union of India**[30], consequent upon Reorganization of the State of Andhra Pradesh, the post of supervisors in the erstwhile State of Hyderabad was equated with the post of Junior Engineers and Supervisor in the State of Andhra, and a criteria prescribed for fixation of *inter se* seniority. The non-graduate supervisors from the erstwhile Hyderabad State, under the conditions of service applicable to them immediately prior to the States Reorganization, were entitled to have 50% of the vacancies in the posts of Assistant Engineers available to them for promotion. The Andhra Rules, which were applied, made available to non-graduate supervisors only 1/3rd of the vacancies in the posts of Assistant Engineers. While the earlier rules made one out of eighteen vacancies, in the post of Assistant Engineers, available for promotion to non-graduate supervisors from the erstwhile Hyderabad State, under the amended A.P. Rules only one out of 24 vacancies in the post of Assistant Engineers was made available to them for promotion. Contending that their conditions of service, as applicable prior to the States Reorganization, had been varied to their disadvantage, the non-

graduate supervisors approached the Apex Court and it was held:-

"….**It is true that a rule which confers a right of actual promotion or a right to be considered for promotion is a rule prescribing a condition of service.** This proposition can no longer be disputed in view of several pronouncements of this Court on the point and particularly the decision in *Mohammad Bhakar* v. *Y. Krishna Reddy: 1970 SLR 768* where this Court, speaking through Mitter, J., said: "Any rule which affects the promotion of a person relates to his condition of service". But when we speak of a right to be considered for promotion, we must not confuse it with mere chance of promotion — the latter would certainly not be a condition of service. This Court pointed out in *State of Mysore* v. *G.B. Purohit: C.A.No. 2281/1965, decided on January 25th, 1967* that though a right to be considered for promotion is a condition of service, mere chances of promotion are not.

…… **Now, here in the present case, all that happened as a result of the application of the Andhra Rules and the enactment of the Andhra Pradesh Rules was that the number of posts of Assistant Engineers available to non-graduate Supervisors from the erstwhile Hyderabad State for promotion, was reduced: originally it was fifty per cent, then it became thirty-three and one-third per cent, then one in eighteen and ultimately one in twenty-four. The right to be considered for promotion was not affected but the chances of promotion were severely reduced. This did not constitute variation in the condition of service applicable immediately prior to November 1, 1956 and the proviso to Section 115 sub-section (7) was not attracted.** This view is completely supported by the decision of a Constitution Bench of this Court in *Ramchandra Shankar Deodhar* v. *The State of Maharashtra: (1974) 1 SCC 317….." (emphasis supplied)*

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In **Union of India v. S.L. Dutta**[31], the contention urged before the Apex Court was that by the change of policy the chances of an Air Vice-Marshal, from the Navigation Stream of the Air Force, to get promoted to the post of an Air Marshal were severely curtailed as the number of posts available to them for promotion was reduced to two apart from the two rotational posts. It was urged that this could, in law, be regarded as a change in the conditions of service of the officers in the Navigation Stream in the Air Force. The Supreme Court observed:-

"……We are not able to accept this contention. In our opinion, what was affected by the change of policy were merely the chances of promotion of the Air Vice-Marshals in the Navigation Stream. As far as

the posts of Air Marshals open to the Air Vice-Marshals in the said stream were concerned, their right or eligibility to be considered for promotion still remained and hence, there was no change in their conditions of service….."

….**As has been laid down more than once by this Court, the court should rarely interfere where the question of validity of a particular policy is in question and all the more so where considerable material in the fixing of policy are of a highly technical or scientific nature.** A consideration of a policy followed in the Indian Air Force regarding the promotional chances of officers in the Navigation Stream of the Flying Branch in the Air Force qua the other branches would necessarily involve scrutiny of the desirability of such a change which would require considerable knowledge of modern aircraft, scientific and technical equipment available in such aircraft to guide in navigating the same, tactics to be followed by the Indian Air Force and so on. These are matters regarding which judges and the lawyers of courts can hardly be expected to have much knowledge by reasons of their training and experience. In the present case there is no question of arbitrary departure from the policy duly adopted because before the decision not to promote respondent 1 was taken, the policy had already been changed. The question is, therefore, whether this change can be said to be arbitrary or mala fide. As we have already pointed out, we are not in a position to hold that this change of policy was not warranted by the circumstances prevailing. As the matter was considered at some length by as many as 12 Air Marshals and the Chief of Air Staff of Indian Air Force, it is not possible to say that the question of change of policy was not duly considered….." (emphasis supplied)

Since a reduction in the chances of promotion does not amount to a change in the conditions of service, the mere fact that, as a result of the amendment to the rules, by G.O.Ms. No. 397 dated 20.09.1999, the chances of promotion of Private Secretaries are reduced would not amount to a change in their conditions of service.

Another conclusion of the Tribunal which is required to be dealt with is that, even after integration of employees from the feeder categories of Private Secretaries and Section Officers in the promotion posts of Assistant Secretaries, they continue to be distinguished on the basis of their birth mark as Private Secretaries and Section Officers for further promotion to the posts

of Deputy Secretaries and above. The Tribunal held that, in effect, promotion to the non-cadre officers posts of Deputy Secretaries and above was not based on seniority of officers in the integrated feeder category of Assistant Secretaries, but on the basis of their birth mark as Private Secretaries and Section Officers. It is true that where government servants from two feeder categories are absorbed in one cadre they form one class and cannot normally, except for just and valid reasons, be discriminated for the purpose of further promotion to higher grades.

In **Mervyn Continho**[9], the grievance of the petitioner was that seniority in the cadre of Principal Appraisers, on promotion from the feeder category of Appraisers, was fixed by a system of rotation and the list was arranged in such a manner that there was one person from the direct recruit appraiser category and one from the promotee appraiser category (who were promoted from the subordinate category in the Customs Department), alternatively. It is in this context that the Supreme Court observed:

"…… This brings us to the question of Principal Appraisers. We are of opinion that the petitioners have a legitimate grievance in this respect. The source of recruitment of Principal Appraisers is one, namely, from the grade of Appraisers. There is therefore no question of any quota being reserved from two sources in their cases. The rotational system cannot therefore apply when there is only one source of recruitment and not two sources of recruitment. **In a case therefore where there is only one source of recruitment, the normal Rule will apply, namely, that a person promoted to a higher grade gets his seniority in that grade according to the date of promotion subject always to his being found fit and being confirmed in the higher grade after the period of probation is over. In such a case it is continuous appointment in the higher grade which determines seniority for the source of recruitment is one. There is no question in such a case of reflecting in the higher grade the seniority of the grade from which promotion is made to the higher grade. Insofar therefore as the respondent is doing what it calls restoration of seniority of direct recruits in Appraisers' grade when they are promoted to the Principal Appraisers' grade, it is clearly denying equality of opportunity to Appraisers which is the only source of**

recruitment to the Principal Appraisers' grade. There is only one source from which the Principal Appraisers are drawn, namely, Appraisers, the promotion being by selection and five years' experience as Appraiser is the minimum qualification. Subject to the above all Appraisers selected for the post of Principal Appraisers must be treated equally. That means they will rank in seniority from the date of their continuous acting in the Principal Appraisers' grade subject of course to the right of the Government to revert any of them who have not been found fit during the period of probation. But if they are found fit after the period of probation they rank in seniority from the date they have acted continuously as Principal Appraisers whether they are promotees or direct recruits. The present method by which the respondent puts a direct recruit from the grade of Appraiser, though he is promoted later, above a promotee who is promoted to the grade of Principal Appraiser on an earlier date clearly denies equality of opportunity where the grade of Principal Appraiser has only one source of recruitment, namely, from the grade of Appraisers. In such a case the seniority in the grade of Principal Appraisers must be determined according to the date of continuous appointment in that grade irrespective of whether the person promoted to that grade from the Appraisers' grade is a direct recruit or a promotee. This will as we have already said be subject to the Government's right to revert any one promoted as a Principal Appraiser if he is not found fit for the post during the period of probation. The petition therefore will have to be allowed with respect to the method by which seniority is fixed in the grade of Principal Appraisers. That method denies equality of opportunity of employment to the Appraisers who are the only source of recruitment to the grade of Principal Appraisers. What the impugned method seeks to do is to introduce a kind of reservation in respect of the two categories of Appraisers from which the promotions are made, and that cannot be done when the source of promotion is one……..." (emphasis supplied)

In **Roshan Lal Tandon**[8], the petitioner entered Railway service as a skilled fitter. Subsequently he was selected as a Trained Examiner Grade D and was later confirmed in that Grade. The petitioner contended that he, along with other direct recruits, formed one class, that their seniority was to be reckoned from the date of appointment as Trained Examiner Grade D and that their promotion to Grade C was to be made on the basis of seniority and suitability irrespective of the source of recruitment. The petitioner contended that, having been brought to Grade D and

made to undergo the necessary selection and training and having been integrated with others who had been brought in through direct recruitment in Grade D, he could not be differentiated for the purpose of promotion to Senior Grade C. It is in this context that the Supreme Court held:

"……..In our opinion, the constitutional objection taken by the petitioner to this part of the notification is well-founded and must be accepted as correct. At the time when the petitioner and the direct recruits were appointed to Grade 'D', there was one class in Grade 'D' formed of direct recruits and the promotees from the grade of artisans. The recruits from both the sources to Grade 'D' were integrated into one class and no discrimination could thereafter be made in favour of recruits from one source as against the recruits from the other source in the matter of promotion to Grade 'C'. **To put it differently, once the direct recruits and promotees are absorbed in one cadre, they form one class and they cannot be discriminated for the purpose of further promotion to the higher Grade 'C'.** In the present case, it is not disputed on behalf of the first respondent that before the impugned notification was issued there was only one rule of promotion for both the departmental promotees and the direct recruits and that rule was seniority-cum-suitability, and there was no rule of promotion separately made for application to the direct recruits. As a consequence of the impugned notification a discriminatory treatment is made in favour of the existing Apprentice Train Examiners who have already been absorbed in Grade 'D' by March 31, 1966, because the notification provides that this group of Apprentice Train Examiners should first be accommodated *en bloc* in Grade 'C' up to 80 per cent of vacancies reserved for them without undergoing any selection. As regards the 20 per cent of the vacancies made available for the category of Train Examiners to which the petitioner belongs the basis of recruitment was selection on merit and the previous test of seniority-cum-suitability was abandoned. In our opinion, the present case falls within the principle of the recent decision of this Court in *Mervyn* v. *Collector*[1]……..." (emphasis supplied).

Both the learned Special Government Pleader appearing on behalf of the learned Advocate General and Sri Nooty Rammohan Rao, learned Counsel for the petitioner-Section officers vehemently contend that on integration of government servants, from the feeder categories of Private Secretaries and Section Officers, in the promoted non-cadre officers posts of Assistant Secretaries they are, thereafter, not differentiated and their further

promotion to higher non-cadre officers posts of Deputy Secretaries, Joint Secretaries and Additional Secretaries is on the basis of their seniority in the respective feeder categories of Assistant Secretaries and above, subject of course to their being found suitable for promotion, and not on the basis of their birth mark as Private Secretaries or Section Officers. In the additional affidavit filed on behalf of the State of Andhra Pradesh by Sri C.S. Lalith Mohan Rao, Assistant Secretary to the Government (Services II), General Administration Department on 28.06.2006, it is stated:-

> "It is respectfully submitted that the Private Secretaries to Secretaries to Government who are promoted as Assistant Secretaries would be entitled to be promoted further as Deputy Secretary to Government from the category of Assistant Secretary to Government basing upon the eligibility, merit and seniority and no Section Officer who is promoted as Assistant Secretary to Government would be preferred over such Assistant Secretaries who are drawn from the category of Private Secretary to Secretary to Government merely on the ground of their channel of promotion. In short, the promotion to the post of Deputy Secretary to Government from the cadre of eligible Assistant Secretary to Government shall be made on grounds of merit and ability, seniority being considered; only where merit and ability are approximately equal of an individual in the category of Assistant Secretary to Government being a selection post. A Private Secretary to Secretary to Government who is promoted as Assistant Secretary to Government would have same rights to be promoted higher to the post of Deputy Secretary to Government, Joint Secretary to Government and Additional Secretary to Government without making any distinction and discrimination vis-à-vis an Assistant Secretary to Government who is drawn from Section Officer's cadre. In this view; of the matter the very ground of the Original Applicants that there is discrimination is baseless and untenable."

From the afore-extracted affidavit, it is obvious that the apprehensions expressed on behalf of the Private Secretaries is misplaced. It is therefore wholly unnecessary for us to delve further on this issue. Suffice to hold that the impugned amendment to the Rules, in G.O.Ms. No. 397 dated 20.09.1999,

only restricts entry of Private Secretaries for promotion to the posts of Assistant Secretaries. Once a Private Secretary is promoted as an Assistant Secretary, his further promotion to the higher non-cadre posts of Deputy Secretary and above is only on the basis of his seniority in the cadre of Assistant Secretaries and in the next higher feeder categories respectively and not with reference to his birth mark as a Private Secretary.

The only question which remains to be examined is whether or not the restrictions placed on the entry of Private Secretaries, for promotion to the Assistant Secretaries category, is in violation of Articles 14 and 16 of the Constitution of India. It needs to be noted that this aspect has not been examined by the Tribunal though the constitutional validity of the rules was in issue before it. Since the Tribunal did not examine this question we were initially inclined to send the matter back to the Tribunal for its adjudication as a Court of first instance. However Sri M. Surender Rao, learned Counsel appearing on behalf of the Private Secretaries, Sri Nooty Rammohan Rao and Sri S. Satyam Reddy, learned Counsel appearing on behalf of the Section Officers and the learned Special Government Pleader appearing on behalf of the Government, would all urge that the constitutional validity of the rules in G.O.Ms. No. 397 dated 20.09.1999 be decided by this Court itself, since remanding the matter back to the Tribunal would result in avoidable delay.

The validity of the amendment to the Rules, in G.O.Ms. No. 397 dated 20.09.1999, or the classification made thereunder is not challenged on the ground of discrimination or that it does not satisfy the twin tests of a valid classification. The validity of the rule is, therefore, not required to be examined on these aspects. It

is contended that the amendment is ultra vires Articles 14 and 16 of the Constitution of India as it is arbitrary and unreasonable.

The Rule of Law, which permeates the entire fabric of the Constitution and forms one of its basic features, excludes arbitrariness. Wherever arbitrariness or unreasonableness are found there is denial of the Rule of Law. What is a necessary element of the Rule of Law is that the law must not be arbitrary or irrational and it must satisfy the test of reason. The fundamental rights erect a protective armour for the individual against arbitrary or unreasonable executive or legislative action. (**Bachan Singh v. State of Punjab**[32]). The content and reach of Article 14 are not limited by the doctrine of classification. Earlier Article 14 came to be identified with the doctrine of classification and the view taken was that that Article 14 forbids discrimination and there would be no discrimination where the classification making the differentia fulfils the twin tests of a valid classification. (**Ajay Hasia v. Khalid Mujib Sehravardi**[33]). It is, however, now well-settled that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It requires that State action must not be arbitrary but must be based on some rational and relevant principle which is non-discriminatory, it must not be guided by any extraneous or irrelevant considerations, because that would be denial of equality. The principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is projected by Article 14 and it must characterise every State action, whether it be under authority of law or in exercise of executive power without

making of law. (**E.P. Royappa v. State of Tamil Nadu**[34] **and Maneka Gandhi v. Union of India**[35]**,Ramana Dayaram Shetty v. International Airport Authority of India**[36]).

If a person complains of unequal treatment, the burden squarely lies on him to place before the court sufficient material from which it can be inferred that there is unequal treatment. Where, however, the necessary materials have not been placed to show how there has been an unequal treatment the plea, of the provisions being violative of Article 14, cannot be entertained. There must be proper pleadings and averments in the substantive petition before the question of denial of equal protection or infringement of fundamental right can be decided. There is always a presumption in favour of the constitutionality of an enactment or a Rule and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. It must be presumed that the legislature understands and correctly appreciates the need of its own people and that its laws are directed to problems made manifest by experience. The claim of equal protection under Article 14, therefore, is examined with the aforesaid presumption that the State acts are reasonable and justified. When a law is challenged as violative of Article 14, it is necessary in the first place to ascertain the policy underlying the statute and the object intended to be achieved by it. (**Ashutosh Gupta v. State of Rajasthan,**[37]).

The complaint based on Article 14 of the Constitution cannot be judged by adopting a doctrinaire approach. A legislative provision or an executive order of general application does not become

unconstitutional merely because, in its actual application, it turns out to be disadvantageous or inequitable to certain individuals or a small section of people. (**THE STATE OF KARNATAKA v. MANGALORE UNIVERSITY NON-TEACHING EMPLOYEES ASSOCIATION**[38]).

When a statute or a Rule is impugned under Article 14 what the Court has to decide is whether the statute is so arbitrary or unreasonable that it must be struck down. (**State of Tamil Nadu Vs. Ananthi Ammal**[39]). Arbitrariness, being opposed to reasonableness, is antithesis to law. There cannot, however, be any exact definition of arbitrariness neither can there be any strait-jacket formula evolved therefor, since the same is dependent on the varying facts and circumstances of each case. (**Praveen Singh v. State of Punjab**[40]). The tests of arbitrariness applicable to executive action do not necessarily apply to delegated legislation. Arbitrariness on the part of the legislature or the rule making authority, so as to make the legislation or the rule violative of Article 14 of the Constitution, should ordinarily be manifest arbitrariness. What would be arbitrary exercise of legislative or rule making power would depend upon the provisions of the statute/rule vis-a-vis the purpose and object thereof. In order to strike down a delegated legislation as arbitrary it has to be established that there is manifest arbitrariness. In order to be described as arbitrary, it must be shown that it was not reasonable and manifestly arbitrary. The expression “arbitrarily” means: in an unreasonable manner, as fixed or done capriciously or at pleasure, without adequate determining principle, not founded in the nature

of things, non-rational, not done or acting according to reason or judgment, depending on the whim alone. (**Sharma Transport v. Govt. of A.P.,**[41], **Khoday Distilleries Ltd v. State of Karnataka**[42], **Otis Elevator Employees Union v Union of India**[43] **and Bombay Dyeing & Mfg. Co. Ltd v. Bombay Environmental Action Group**[44]).

It is in this context that the submission of Sri M. Surender Rao, learned Counsel for the respondents-applicants, is required to be examined. Learned Counsel would contend that, since promotion of Private Secretaries to the higher posts of Assistant Secretaries is contingent on the vacation of posts, in the categories of Assistant Secretaries/Deputy Secretaries/Joint Secretaries and Additional Secretaries, by persons whose birth mark is that of a Private Secretary, such a prescription is arbitrary and is in violation of Articles 14 and 16 of the Constitution of India. Both Sri Nooty Rammohan Rao and Sri S. Satyam Reddy, learned Counsel for the petitioners-Section Officers, would on the other hand contend that this prescription is not alien and would cite a few instances of such provisions in the service rules.

The judgments cited across the Bar and other judgments on this aspect, shall now be referred to.

In **Paramjit Singh Sandhu v. Ram Rakha Mal**[45], a miscellaneous petition was filed before the Supreme Court to have the seniority list, of Deputy Superintendents of Police in the Punjab Police Service, quashed. Rule 6 of the Punjab Police Service Rules provided for recruitment, to the cadre of Deputy Superintendents of Police, from two sources, 80% by promotion

from the rank of Inspectors and 20% by direct recruitment. While a quota rule existed for recruitment, Rule 10 prescribed that seniority be determined with reference to the date of confirmation in the service. The question which arose for consideration was, when recruitment was made from two sources in accordance with a quota rule and recruits from both sources had to be integrated into one service, the manner in which their *inter se* seniority was to be regulated. Recruits from both sources were, under Rule 8, to be on probation for two years including the period of training. Clause(b) of Rule 8 provided for dispensing with the services of a direct recruit on his failing to pass the final examination or on his being found unfit for appointment. Proviso to Rule 8(b) enabled the government to extend the period of probation by not more than one year. The Supreme Court had, earlier, held that at the end of three years a direct recruit, if not found unfit for appointment, would automatically stand confirmed. The grievance of the promotees was that, though the rules did not provide for automatic confirmation, the consequence of the earlier order of the Apex Court was that a direct recruit would get automatic confirmation on completion of three years and his seniority reckoned from that date, resulting in the promotees, who were given the benefit of confirmation later than the direct recruits, being affected thereby. The promotees sought clarification of the earlier order of the Supreme Court. While clarifying that there was no ambiguity in its earlier judgment, the Apex Court observed:-

"…..**Ordinarily speaking, where recruitment is from two sources with a view to integrating recruits from both sources after the recruitment seniority is determined from the date of entry into the cadre except where there has been a substantial violation of the quota giving undeserved advantage to one or the other source. Seniority ordinarily speaking is determined with reference to the date of entry**

into the cadre which in service jurisprudence is styled the date of continuous officiation. These notions of service jurisprudence may have to yield place to the specific rules and the fact situation with reference to Rule 10 did compel this Court to depart from the normal concept in service jurisprudence. **However, introduction of a roster system is very well known in service jurisprudence. What this Court meant while saying that when a quota rule is prescribed for recruitment to a cadre it meant that quota should be co-related to the vacancies which are to be filled in. Who retired and from what source he was recruited may not be very relevant because retirement from service may not follow the quota rule. Promotees who come to the service at an advanced age may retire early and direct recruits who enter the service at a comparatively young age may continue for a long time. If, therefore, in a given year larger number of promotees retire and every time the vacancy is filled in by referring to the source from which the retiring person was recruited it would substantially disturb the quota rule itself. Therefore, while making recruitment quota rule is required to be strictly adhered to. That was what was meant by this Court when it said: [SCC p. 486, para 14: SCC (L&S) p. 318]**

> **The quota rule would apply to vacancies and recruitment has to be made keeping in view the vacancies available to the two sources according to the quota.**

The quota in the present case is 4:1, that is, four promotees to one direct recruit. Therefore, whenever vacancies occur in the service the appointing authority has to go on recruiting according to quota. In other words, whenever vacancies occur, first recruit four promotees irrespective of the factors or circumstances causing the vacancies and as soon as four promotees are recruited bring in a direct recruit. That was what was meant by this Court when it said that a roster has to be introduced and this roster must continue while giving confirmation…… (emphasis supplied)

In **R.L. Bansal v. Union of India**[46], Assistant Engineers, who were appointed to officiate temporarily, during the period October 1958 to January 1963, approached the Delhi High Court aggrieved by the fact that certain direct recruits, who were appointed as Assistant Engineers later, had been confirmed as Assistant Engineers earlier, while their services remained unconfirmed. They contended that they were entitled to be confirmed prior to or at any rate along with the direct recruits. The writ petition filed by them was allowed by the Full bench of the

Delhi High Court. One of the direct recruits approached the Supreme Court and the special leave petition was dismissed. Prior to the dismissal of the special leave petition, the Central Government had prepared a provisional seniority list of Assistant Engineers. Before the said provisional seniority list was finalized, the Supreme Court had passed orders dismissing the special leave petition. Thereafter the Central Government amended the rules, and in addition framed a new set of rules in 1977 giving it retrospective effect from the date the 1954 rules had been brought into force, prescribing that seniority was to be determined with reference to the date of confirmation and that the date of confirmation was to be determined not with reference to the date of appointment or the date of promotion but in a different manner. Giving effect to the amended rules a fresh seniority list of Assistant Engineers was prepared. Aggrieved thereby four out of the 12 Assistant Engineers, who had earlier approached the Delhi High Court, filed a writ petition before the Supreme Court. It is in this context that the Supreme Court held:-

"…..**Now it is true that rules made under the proviso to Article 309 of the Constitution being legislative in character cannot be struck down merely because the Court thinks that they are unreasonable, — and that they can be struck down only on the grounds upon which a legislative measure can be struck down. Vide *B.S. Vadera* v. *Union of India: AIR 1969 SC 118* and *B.S. Yadav* v. *State of Haryana: 1980 Suppl SCC 524* we are yet of the opinion that Rule 4 of 1979 Rules (as amended in 1982) insofar as it predicates seniority on the date of confirmation — which confirmation is directed to be made on a wholly unequal and discriminatory basis — is violative of the equal opportunity clause enshrined in Article 16 of the Constitution.** The cadre, it is admitted consists of both permanent and temporary members. The rules do not say that promotees shall not be appointed against permanent posts or that they shall be appointed only against temporary posts. It is true that generally direct recruitment is made only against permanent vacancies/posts whereas promotions may be made both against permanent as well as temporary vacancies/posts. But in this service, it is

clear from the rules themselves that even the direct recruitment is made against temporary posts. In short, there is no distinction between the four erstwhile categories mentioned in unamended Rule 3. They could be appointed both against permanent as well as temporary posts. If so there appears to be no justification for treating all the appointees under clauses (*b*) and (*c*) of Rule 3, en bloc, on par with direct recruits against temporary posts (as has been done by Rules 4 and 5 of 1979/1982 Rules) which suggests as if all such appointments were made, at all points of time, only against temporary posts. At the cost of repetition, we may mention that those appointed under unamended clause (*b*) of Rule 3 were expressly referred to as direct appointees and yet they are now converted into promotees en bloc and downgraded vis-a-vis direct recruits under unamended clause (*a*) of Rule 3. All this, in our opinion, is discriminatory and violative of Articles 14 and 16(1). There were four channels/sources of appointment. Direct recruitment was one of them — unamended clause (*a*). Unamended clause (*b*) provided for another type of direct appointment while unamended clause (*c*) provided for promotion. True, there was no quota fixed as between them as held by this Court and Delhi High Court but the rules nowhere stated that appointment under unamended clauses (*b*) and (*c*) shall be made only against temporary posts. All the four sources were equal — qualitywise. Neither was superior to the other. In these circumstances, bringing in new concepts of 'Assistant Engineers recruited against permanent posts', and 'Assistant Engineers promoted from the lower ranks' through the 1979 Rules (as amended by 1982 Rules) and treating the latter category unfavourably on that basis (vide Rules 4 and 5 of 1979/1982 Rules) is a clear case of hostile discrimination. In this context, if we recall the principles enunciated by the Delhi High Court and this Court in the earlier writ petition referred to hereinbefore, the intention of the rule-making authority to undo the effect of the said judgments, to the grave prejudice of the Assistant Engineers appointed under clauses (*b*) and (*c*) of unamended Rule 3 becomes crystal clear. The entire course of amendments and new rules appears to be designed to undo the effect of the said judgment with retrospective effect. Not only the classification has no basis in the rules — or in the factual situation — it is unreasonable and unjust; it is also unrelated to the object — the object being efficiency of administration….."(emphasis supplied)

I n **R.K. Sabharwal**[1], instructions were issued by the Government of Punjab providing reservations for the Scheduled Castes and Backward Classes in promotions to and within Class I and II services under the State Government. 16 per cent of the posts, to be filled by promotion, were to be reserved for members of the Scheduled Castes and the Backward classes, subject to the condition that persons to be considered must possess the

minimum necessary qualifications and should have a satisfactory record of service.

The petitioners stood higher, in the seniority list of Superintending Engineers, as compared to the respondents who belonged to the Scheduled Castes and the Backward classes. One of the respondents was promoted to the rank of Chief Engineer, against a post reserved for the Scheduled Castes, superseding 36 others including the petitioners. The petitioners contended that once posts earmarked for the Scheduled castes/Scheduled Tribes or Backward classes in the roster was filled up reservation was complete and the roster could not be operated any further. Any posts falling vacant, in a cadre, thereafter was to be filled up from the category, reserved or general, caused due to retirement etc., of those members whose posts fell vacant. It is in this context that the Supreme Court observed:-

"…..When the State Government after doing the necessary exercise makes the reservation and provides the extent of percentage of posts to be reserved for the said backward class then the percentage has to be followed strictly. The prescribed percentage cannot be varied or changed simply because some of the members of the backward class have already been appointed/promoted against the general seats. As mentioned above the roster point which is reserved for a backward class has to be filled by way of appointment/promotion of the members of the said class. No general category candidate can be appointed against a slot in the roster which is reserved for the backward class. The fact that considerable number of members of a backward class have been appointed/promoted against general seats in the State Services may be a relevant factor for the State Government to review the question of continuing reservation for the said class but so long as the instructions / Rules providing certain percentage of reservations for the back ward classes are operative the same have to be followed. Despite any number of appointees/promotees belonging to the backward classes against the general category posts the given percentage has to be provided in addition. ……

"……. The reservation provided under the impugned Government instructions are to be maintained in each Department. The roster is implemented in the form of running account from year to year. The purpose of "running account" is to make sure that the Scheduled Castes/scheduled

Tribes and Backward classes get their percentage of reserved posts. The concept of "running account" in the impugned instructions has to be so interpreted that it does not result in excessive reservation. "16 Per Cent of the posts. . . " are reserved for members of the Scheduled Caste and Back ward classes. In a lot of 100 posts those falling at serial numbers 1, 7, 15, 22, 30, 37, 44, 51, 58, 65, 72, 80, 87, and 91 have been reserved and earmarked in the roster for the Scheduled Castes. Roster points 26 and 76 are reserved for the members of Backward Classes. It is thus obvious that when recruitment to a cadre starts then 14 posts earmarked in the roster are to be filled from amongst the members of the Scheduled Caste. To illustrate, first post in a cadre must go to the Scheduled Caste and thereafter the said class is entitled to 7th, 15th, 22nd and onwards up to 91st post. When the total number of posts in a cadre are filled by the operation of the roster then the result envisaged by the impugned instructions is achieved. In other words, in a cadre of 100 posts when the posts earmarked in the roster for the Scheduled Castes and the Backward Classes are filled the percentage of reservation provided for the reserved categories is achieved. We see no justification to operate the roster thereafter. The "running account " is to operate only till the quota provided under the impugned instructions is reached and not thereafter. Once the prescribed percentage of posts is filled the numerical test of adequacy is satisfied and thereafter the roster does not survive. The percentage of reservation is the desired representation of the Back ward Classes in the State services and is consistent with the demographic estimate base on the proportion worked out in relation to their population. The numerical quota of posts is not a shifting boundary but represents a figure with due application of mind. Therefore, the only way to assure equality of opportunity to the Backward Classes and the general category is to permit the roster to operate till the time the respective appointeess/promotees occupy the posts meant for them in the roster. The operation of the roster and the "running account" must come to an end thereafter. The vacancies arising in the cadre, after the initial posts are filled, will pose no difficulty. As and when there is a vacancy whether permanent or temporary in a particular post the same has to be filled from amongst the category to which the post belonged in the roster. For example the Scheduled Caste persons holding the posts at Roster-points 1, 7, 15, retire then these slots are to be filled from amongst the persons belonging to the Scheduled Castes. Similarly, if the persons holding the post at points 8 to 14 or 23 to 29 retire then these slots are to be filled from among the general category. By following this procedure there shall neither be shortfall nor excess in the percentage of reservation……..”

In **R.N. Bhatnagar (Dr)**[11], the manner in which the vacancy in the post of Professor of Opthalmology, in the Govt. Medical College, Patiala, was to be filled up in accordance with Rule 9(i)(d) of the Punjab Medical College Education Service (Class-I) Rules,

1978, was in issue. Rule 9(1)(d) read thus:-

> "(9) Method of appointment:-
>
> (d) In the case of Professors:
>
> (i) 75 per cent posts by promotion from amongst the Additional Professors, or where Additional Professors are not available, from amongst the Associate Professors, or, where Associate Professors are not available, from amongst the Assistant Professors, or by transfer of officials already in the service of the Government of India, or the State Government;
>
> (ii) 25 per cent posts by direct recruitment;"

It was contended on behalf of the Govt. of Punjab that, as there were five posts in the cadre of Professors of Opthalmology in the Government Medical College, Patiala, in view of the quota rule in Rule 9, every three vacancies of professors in the cadre had to be filled by departmental promotees while the 4th vacancy was to be filled by direct recruitment and thereafter the succeeding vacancies had to be filled by promotees and direct recruits in successive cycles of 3:1. The State Government contended that, since this method had been followed eversince the inception and as there were in all fifteen professors, the retirement of one Professor had resulted in the 16th vacancy having arisen and on the operation of the quota rule and the roster cycles of 3:1, the 16th vacancy would be available for direct recruitment as under:

> "1st vacancy to promotee, 2nd vacancy to promotee, 3rd vacancy to promotee, 4th to direct recruit, recruit, 5th, 6th and 7th to promotees, 8th to direct recruit, 9th, 10th and 11th to promotees, 12th to direct recruit, 13th, 14th and 15th to promotees and 16th to direct recruit."

The contention of the petitioner, an Assistant Professor, which found acceptance with the Punjab and Haryana High Court, was that in the light of the judgment of the Apex Court in **R.K. Sabarwal**[1] as there were a total of five posts, in the cadre of Professors of Opthalmology, 75 per cent thereof i.e., 3.75 posts

had to be reserved for promotees and 1.25 posts remaining had to be reserved for direct recruits and rounding up these figures, four posts had to be filled up at a given point of time by promotees and one post had to be filed by direct recruitment, and as at that time, when the vacancy which had arisen on the retirement of a professor, there was already one direct recruit holding the post of professor, the vacancy in question had to go to the departmental promotee as he was the seniormost Assistant Professor in the department of Opthalmology. The Punjab & Haryana High Court held that, as there was already a direct recruit working as a Professor, the vacancy in the post must go to a promotee as there were only three promotees occupying the post of Professor in the department of Opthalmology at the relevant time and, since among the five posts there was already one direct recruit and three promotees, the 5th vacancy had necessarily to be filled up only by promotion. After referring to its earlier judgment in **Paramjit Singh Sandhu**[46] with approval, the Apex Court observed:

"....The aforesaid decision which squarely applies to the facts of the present case, therefore, leaves no room for doubt that when under the Recruitment Rule 9 in question, there is no reservation of any given category of candidates like SCs, STs or BCs to the posts in the cadre of Professors, appointments to the posts in the cadre have to be made in the light of the percentage of vacancies in the posts to be filled in by promotees or direct recruits. **The quota of percentage of departmental promotees and direct recruits has to be worked out on the basis of the roster points taking into consideration vacancies that fall due at a given point of time. As stated earlier, as the roster for 3 promotees and one direct recruit moves forward, there is no question of filling up the vacancy created by the retirement of a direct recruit by a direct recruit or the vacancy created by a promotee by a promotee. Irrespective of the identity of the person retiring, the post is to be filled by the onward motion of 3 promotees and one direct recruit. Consequently, learned counsel for the appellant and learned Senior Counsel for the intervenor were right when they contended that the High Court in its impugned judgment had patently erred in invoking the ratio of the decision of this Court in *R.K. Sabharwal case*[1] which was rendered in an entirely different**

context for resolving an entirely different controversy which did not arise on the facts of the present case. They were also right in contending that the ratio of the decision of this Court in *Paramjit Singh case*[2] read with the decision of this Court in the same case reported in *Paramjit Singh*[3] would get squarely attracted in the facts of the present case. Once that conclusion is reached, the result becomes obvious. Whenever in the cadre of Professors of Ophthalmology, vacancies arise for being filled in at any given point of time, those vacancies in the posts have to be filled in by operating the roster in such a way that available vacancies get filled up by allotting 75% of them to departmental promotees and 25% to direct recruits. Exactly in this way, the roster in the present case was operated by the appellant-State to regulate entry in the cadre of Professors……

…… That is how the roster points were worked out by the appellant for regulating the recruitment from two sources, i.e., promotees and direct recruits. Though the word "post" is used in Rule 9 of the Rules, it cannot be said that it must necessarily refer to total posts in the cadre and not to vacancies. It is obvious that recruitment to fill up the vacancies as may be existing from time to time in the cadre is controlled by the quota or percentage of posts earmarked for promotees as compared to direct recruits. As laid down by this Court in the aforesaid two decisions rendered by the Division Benches of two learned Judges, speaking through D.A. Desai, J., it has to be held that for working out the rule of recruitment envisaging appointments from two sources of promotees and direct recruit vacancies in the cadre of Professors had to be kept in view and not the posts themselves.

……That is how Rule 9 laying down quota and rota for monitoring recruitment from two sources of departmental promotees and direct recruits can work uniformly in all the departments for recruitment of Professors where the posts of Professor in the cadres of departments concerned may consist of a solitary post or two posts or more than two posts or may be five posts, as in the present case. This would result in a harmonious operation of Rule 4 and Rule 9 and no part of Rule 9 will be rendered otiose or truncated in such a case. **It must, therefore, be held that the reasoning adopted by the High Court in connection with the working of the aforesaid Rule falls foul on the touchstone of Article 16(1) read with the statutory scheme as envisaged by these Rules…….(emphasis supplied)**

In **All India Federation of Central Excise**[5], the interpretation to be placed on the proposals of the Union Government dated 08.06.1989 was in issue. The dispute related to promotion to Group A posts in the Indian Customs and Central Excise (Group A) Service. The feeder categories, for promotion to these posts in Group A services, were (a) Superintendents of Central Excise,

Group B; (b) Superintendent of Customs (P) Group B; (c)(i) Customs Appraisers Group B (consisting of officers directly recruited through UPSC); (cii) Promotees from the feeder cadre of Customs Examiners (in the ratio of 50:50).

Under the proposals of the Govt. of India dated 08.06.1989, as between Excise department officials and the Custom department officers, promotion from Group B to Group A was to be in the ratio of 2:1 or 6:3, ie., six posts to promotees from Central Excise Superintendent Group B and thereafter, from out of the next three promotions meant for the Customs department, one would go to Superintendent (P) Customs and two to Customs Appraisers Group B. The order of promotion was set out in the ratio 6:1:2 between Superintendents Excise, Superintendents (P) Customs and Appraisers of Customs, with the first six to Superintendent of Excise, the next to Superintendent (P) Customs and the last two to Appraisers Customs. The contention of the petitioners was that at all times Group A posts must contain a ratio of six promotees from the Central Excise Superintendents Group B for every nine group A posts. It is in this context, that the Supreme Court observed:-

"... **It will be noticed that prior to the proposals dated 8-6-1989, there was no quota as between the three feeder groups for the purpose of promotion to Group A and it appears promotions were being made on the basis of the length of service or continuous officiation. But then, it was found over a period that such a procedure created various grievances among the three feeder groups. Therefore, introduction of a quota system was found to be necessary. Then the next question before the Department was as to what was to be the quota between the various groups. Obviously it was to be one providing an equitable distribution of Group A posts between the three feeder groups. For that purpose the Department went into the question as to the posts having distinctive functions in the two main groups, the Excise and the Customs Departments and then it went into the same question in the two sub-groups of the Customs Officers. After finding out the number of posts in the two main groups of Excise and Customs, it was obviously decided that a quota of 2:1 or 6:3 would be fair as between**

Excise and Customs groups and that a further sub-quota of 1:2 would be just as between the two sub-categories in the Customs Department. That was how the quota of 6:1:2 appears to have been arrived at. We are clear in our mind that, on a fair reading of the whole of para 4, that was all the purport of *para 4* and it was never intended in the said *para 4* that in the promoted category of Group A Officers, there should always be 6 promotees from Excise Superintendents Group B for every 9 posts in Group A.

"…… Thus, on an analysis of paras 4, 6.1 and 6.3, we find no conflict whatsoever between the said paras. On the other hand, they form a harmonious scheme. **The result is that once officers from these three feeder categories are promoted to Group A, they cease to have their birthmarks of Group B in the promoted category of Group A. There would then be no question of filling up a vacancy in Group A created by the retirement of a promotee Excise Superintendent Group B by another officer from the same group. This is because, once promoted to Group A, the identity of the feeder channel from which they are promoted ceases to exist.**

Reliance by the petitioners is placed upon *R.K. Sabharwal case: 1995(2) SCC 745*. That case deals with the principle that the posts vacated by an officer recruited from the SC/ST category must be filled in only by the same reserved category. This is because of the special provision in Article 335 of the Constitution of India relating to adequate representation of the SCs/STs in the services. The birthmarks there remain even on promotion inasmuch as a particular number of posts in the promotional category are reserved to be filled in only from among SCs/STs. On the other hand, so far as a normal quota rule between two feeder channels for recruitment or promotion is concerned, be it between direct recruits and promotees or promotion by a quota between different feeder groups (as in the case before us), the relevant precedents are *Paramjit Singh Sandhu* v. *Ram Rakha Mal: 1982(3) SCC 91* and *State of Punjab* v. *Dr R.N. Bhatnagar: 1999(2) SCC 330*……..

……..The position in regard to the quota of 6:1:2 in the case before us is no different……" (emphasis supplied)

In **Kuldeep Kumar Gupta**[6], the power to frame regulations, providing a separate quota of promotional avenues for the less qualified Junior Engineers in preference to the claim of the qualified diploma-holder Junior Engineers, was in issue. Junior Engineers formed the feeder category for promotion to the post of Assistant Engineers. In the Junior Engineers cadre, 95% of the vacancies were to be filled up by direct recruitment of persons

who were diploma-holders and the remaining 5% was by promotion from amongst the lower category, who were mainly matriculates with ITI Certificates. From the inception of the service a specified percentage or quota had been made available, in the promotional cadre of Assistant Engineers, for the unqualified Junior Engineers notwithstanding the fact that all Junior Engineers formed one cadre in the Himachal Pradesh State Electricity Board. This prescription of a separate quota was struck down by the Himachal Pradesh Administrative Tribunal as arbitrary and irrational. Consequent thereto, the promotee Junior Engineers filed a special leave petition before the Apex Court. In this context the Supreme Court observed:-

"……**From the facts asserted and the contentions raised in these appeals, the following questions really arise for our consideration:**

> ***1*. The feeder cadre of Junior Engineers, having been filled up from two recruitment sources, one by qualified diploma-holders by way of direct recruitment and the other by unqualified matriculate ITI Certificate-holders by promotion, can there be a separate consideration for them in the matter of promotion to the post of Assistant Engineer and whether such separate consideration violates any constitutional mandate?**
>
> *2*. Providing a quota in the promotional cadre, whether can be said to be a reservation within the meaning of Article 16(4) and as such can it be held to be violative of Article 16(4) of the Constitution?
>
> *3*. Administrative efficiency being the consideration, though it may be permissible to have a specified percentage of posts in the promotional quota on the basis of educational qualification, as held in *Murugesan*4 can it be held to be violative of Articles 14 and 16, when such a quota is meant for unqualified persons in the feeder category?

So far as the first question is concerned, it is no doubt true that in earlier decisions of this Court in *Roshan Lal Tandon: AIR 1967 SC 1889* and *Mervyn Continho*: AIR 1967 SC 52 this Court has held that once the direct recruits and promotees were absorbed in one cadre, they form one class and they could not be discriminated against, for the purpose of further promotion to the higher grade. But this view has not been found favour with in the later Constitution Bench decision in *Triloki Nath Khosa: 1974(1) SCC 19*. It has been laid down in the aforesaid case that even where direct recruits and promotees are integrated into a common class, they could, for the purpose of promotion to the higher

cadre be classified on the basis of educational qualification. It was held by this Court in *Triloki Nath*6 that classification in matters of promotion with academic or technical qualification as a basis is a matter for legislative determination and such a classification is permissible unless it is found to be unjust on the face of it and the onus lies upon the party attacking the classification to show by pleadings the necessary material before the court that the said classification is unreasonable and violative of Article 16. It is in that context the Court further observed that discrimination is the essence of classification and does violence to the constitutional guarantee of equality only if it rests on an unreasonable basis and that being the position, it would be for the party assailing such classification to establish that the classification is unreasonable and bears no rational nexus with its purported object. In the absence of furnishing necessary particulars, it must be construed that the plea of unlawful discrimination had no basis. In *Triloki Nath: 1974(1) SCC 19* a word of caution has been indicated that the right to classify is hedged in with salient restraints. Classification must be truly founded on substantial differences which distinguish persons grouped together from those left out of the group and such differential attributes must bear a just and rational relation to the object sought to be achieved and judicial scrutiny extends only to the consideration whether the classification rests on a reasonable basis and whether it bears a nexus with the object in view. It cannot extend to embarking upon a nice or mathematical evaluation on the basis of classification. In *Triloki Nath*6 the Court held that *Roshan Lal case: AIR 1967 SC 1889* is no authority for the proposition that there cannot be a classification for the purpose of promotion on a basis other than the one that they were drawn from different sources. *Triloki Nath*: 1974(1) SCC 19 thus distinguishes both the earlier decisions in *Mervyn Continho: AIR 1967 SC 52* and *Roshan Lal Tandon*: AIR 1967 SC 1889. *Triloki Nath* has been followed in *Murugesan: 1993(2) SCC 340* where this Court held that it would be open for the rule-making authority, having regard to the efficiency of the administration and other relevant circumstances to restrict the chance of promotion of the less-qualified people in the feeder category. In *Murugesan*: *1993(2) SCC 340* the Court upheld the quota in the matter of promotion in favour of graduate Engineers. It may be noticed that in *Murugesan*: *1993(2) SCC 340* the Court overruled the earlier decision in *Punjab SEB: 1986(4) SCC 617* distinguished in *Abdul Basheer case: 1989 Suppl(2) SCC 344*. The contention of Mr Subramanium, is no doubt that there can be a classification in favour of the qualified people having regard to the efficiency of the administration but a classification in the manner of providing a quota for unqualified people cannot be held to be in the interest of administration and, therefore, cannot be sustained on the principles of *Murugesan*4. We are unable to accept this contention of the learned counsel for the appellants. Once a classification is permissible notwithstanding that the feeder category is one, when the said classification is challenged as being discriminatory, then unless and until sufficient materials are produced and it is established that it is unjust on the face of it by the persons assailing the classification, the Court would be justified in coming to the conclusion that such plea of

unlawful discrimination had no basis, as was observed in *Triloki Nath: 1974(1) SCC 19*. Adjudged from the aforesaid standpoint when the pleadings in the case in hand are examined, we do not find any materials to sustain the plea of discrimination raised by the appellants, who are direct recruit diploma-holder Junior Engineers. **In the case in hand, the Regulations from time to time on being examined, unequivocally show that right from the inception, quota has been provided for promotion in favour of the unqualified promotee Junior Engineers, though the quota has been changed from time to time and while providing such quota, longer experience as Junior Engineer has been the basis for being eligible for promotion. Providing such a quota in the service history right from the inception is also a germane consideration for the Court while considering the question of alleged discrimination. That apart when the feeder category itself is filled up by direct recruit diploma-holders and promotee unqualified matriculates and if no quota is provided for such unqualified matriculates in the promotional cadre of Assistant Engineer then they may stagnate at that stage which will not be in the interest of administration. If the rule-making authority on consideration of such stagnation, provides a quota for such unqualified promotee Junior Engineers, the same cannot be held to be violative of any constitutional mandate and on the other hand would come within the ratio of *Murugesan*: 1993(2) SCC 340. In our considered opinion, therefore, there can be a separate consideration for the promotee unqualified matriculate Junior Engineers in the matter of promotion to the post of Assistant Engineer and the impugned Regulation providing a quota for them cannot be held to be violative of Article 14…..”** (emphasis supplied)

In **Dwarka Prasad**[7], the validity of the 25% quota fixed for Preventive Officers (Gr-1) in the Central Services Group-C (non-gazetted) for promotion to the post of Appraisers was under challenge before the Central Administrative Tribunal, Mumbai bench as arbitrary and discriminatory as a higher quota of 75% had been fixed for the Examining Officers. The Mumbai Bench of the Tribunal rejected the challenge of the Preventive Officers, both on merits and on the ground of *res judicata,* relying on a two-Member judgment of the Madras Bench of the Tribunal in which a similar challenge by the India Customs Preventive Services Federation had been negatived. Aggrieved thereby the Preventive Officers filed a petition seeking special leave and the Supreme Court held thus:-

"…This contention also is unacceptable. As has been pointed out, in Group 'B' posts POs have two channels of promotion; 100% to the post of Superintendent (Group 'B') and 20% for the post of Appraiser, EOs have only one channel of promotion with quota of 75% for promotion to Group 'B' posts. **Thus the holders of the two posts constitute two distinct classes with different conditions of service and nature of duties. It is open to the promoting authority to treat them differently in the matter of providing avenues of promotion to Group 'B' posts. In the case of *State of Rajasthan* v. *Rajendra Kumar Godika: 1993 Suppl(3) SCC 150* (SCC at p. 167, para 17) this Court relied and quoted with approval the following passage from *Constitutional Law* by Prof. Willis and repelled similar contention on grievance of discrimination:**

"Mathematical nicety and perfect equality are not required. Similarity, not identity of treatment, is enough. If any state of facts can reasonably be conceived to sustain a classification, the existence of that state of facts must be assumed. One who assails a classification must carry the burden of showing that it does not rest upon any reasonable basis."

Articles 14 and 16 of the Constitution of India cannot be pressed into service to describe the fixation of lower quota for POs as discriminatory. **It is well established in law that the right to be considered for promotion on fair and equal basis without discrimination may be claimed as a legal and a fundamental right under Articles 14 and 16 of the Constitution but chances of promotion as such cannot be claimed as of right (see *Ramchandra Shankar Deodhar* v. *State of Maharashtra: 1974(1) SCC 317*, AIR para 12, at p. 267). The decision relied on behalf of the appellants in the case of *All India Federation of Central Excise* v. *Union of India: 1997(1) SCC 520* is of little assistance to the appellants' case. In that case, this Court had considered the proposals made by the Department for refixation of quota to redress the grievance of the petitioners to some extent. In the other case between the same parties reported in *All India Federation of Central Excise* v. *Union of India: 1999(3) SCC 384* the Court could not be persuaded to issue any direction for alteration of the quota fixed. None of the two decisions therefore is helpful in supporting the contention advanced on behalf of the appellants……" (emphasis supplied)**

While in **Paramjit Singh Sandhu**[46], **R.N. Bhatnagar**[11], **Kuldeep Kumar Gupta**[6] and **Dwaraka Prasad**[7] a quota, in terms of a percentage of the total number of posts in the higher category, was earmarked for each of the feeder categories, in **All-India Federation of Central Excise**[5] a ratio was prescribed for each of

the feeder categories for promotion to the next higher category. In none of these cases were the rules struck down as arbitrary, unreasonable or ultravires Articles 14 and 16 of the Constitution of India. While interpreting the rules, in examining the construction to be placed thereon, the manner in which the rule was to be applied and in the context of the submission made that the vacancy arising due to the retirement of a promotee officer should be filled up by promotion of persons from that category only, did the Supreme Court observe that the rules could not be so interpreted as to require a vacancy created by the retirement of a promotee being filled up only by a person from the same category of service. Observations in judgments should not be read out of context and applied to a case where the rules, instead of prescribing a quota or a ratio, amongst the feeder categories for promotion to a higher category, has instead prescribed a maximum limit on the total number of non-cadre officers posts which can be occupied by employees from one of the feeder categories. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law but governed and qualified by the peculiar facts of the case in which such expressions are to be found. A case is only an authority for what it actually decides and not what may seem to follow logically from it. (**State of Orissa v. Sudhansu Sekhar Misra**[47]). In **Sri Konaseema Co-operative Central Bank Ltd v. N. Seetharama Raju**[48], a Full Bench of this Court held:-

".....While on this subject, it is necessary to remind ourselves of certain

basic truisms, **it would be reasonable to assume that the Supreme Court – where it proposes to depart from an established line of authority and an established legal position – would not do so without even referring to its earlier decisions. It would not be reasonable on the part of the High Court to say that the Supreme Court would effect a radical departure from an established position without even referring to its earlier decisions, particularly where such position is established by decisions of large Benches. Even if there are any words which do not strictly fit into the established legal position, it would be more reasonable to read them consistent with the well-established legal position than to infer a conflict, or to say on that basis that the previous law stands overruled**. In the interest of certainty of law and judicial discipline, we ought to construe the several decisions of the Supreme Court as constituting motifs of a harmonious pattern. After all, judgments ought not to be read as statutes; they are authority for what they decide. **A word here or a word there, should not be made a basis for inferring inconsistency or conflict of opinion. Law does not develop in a casual manner. It develops by conscious, considered steps**……..” (emphasis supplied)

It is also well settled that judgments are not to be read as statutes. In **Bharat Petroleum Corporation Ltd v. N.R. Vairamani**[49] the Supreme Court observed:

“…….**Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid’s theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated**. **Judgments of courts are not to be construed as statutes.** To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. **Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.** In *London Graving Dock Co. Ltd.* v. *Horton 1951 AC 737* (AC at p. 761) Lord MacDermott observed: (All ER p. 14 C-D)

> “The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge,…”

In *Home Office* v. *Dorset Yacht Co. (1970) 2 All ER 294* (All ER p. 297*g-h*) Lord Reid said, “Lord Atkin’s speech ... is not to be treated as if it were a statutory definition. It will require qualification in new circumstances”. Megarry, J. in *Shepherd Homes Ltd.* v. *Sandham (No. 2): (1971) 1 WLR*

1062 observed: “One must not, of course, construe even a reserved judgment of Russell, L.J. as if it were an Act of Parliament.” And, in *Herrington* v. *British Railways Board: (1972) 2 WLR 537* Lord Morris said: (All ER p. 761*c*)

> “There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case.”

Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

The following words of Lord Denning in the matter of applying precedents have become locus classicus:

> “Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.
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> * * *
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> Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it.” (emphasis supplied)

In **Ashwani Kumar Singh v. U.P. Public Service Commission**[50], and **Union of India Vs. Amritlal Manchanda**[51], the Supreme Court held:-

“**…….Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are not to be read as Euclid’s theorems nor as provisions of the statute.** These observations must be read in the context in which they appear. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark upon lengthy discussions, but the discussion is meant to explain and not to define. **Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes…….” (emphasis supplied)**

Without examining the policy underlying it, a rule made under the proviso to Article 309 of the Constitution of India, cannot per se be held to be arbitrary or unreasonable and in violation of Articles 14 and 16 of the Constitution of India, merely because, in its application, entry of employees from one of the feeder categories, for promotion to higher posts is made contingent on the vacation of posts by employees in higher categories who previously belonged to the same feeder category.

Is the amendment to the rules, in G.O.Ms. No. 397 dated 20.09.1999, so arbitrary and unreasonable as to violate Articles 14 and 16 of the Constitution of India? In this context it is necessary to briefly refer to the reasons which weighed with the Government in making the aforesaid amendment to the Rules. The permanent cadre strength of Section Officers is 355 posts as against the permanent cadre strength of Private Secretaries to the Secretaries to the Government of 25 posts. The ratio, between the permanent cadre strength of Section Officers on the one hand and the Private Secretaries on the other, is 355: 25 or 14:1. The permanent cadre strength of non-cadre officers, (other than in Law, Finance & Planning Departments), i.e., from Assistant Secretaries to Additional Secretaries, is 151 posts. With a view to enable both Private Secretaries and Section Officers to have reasonable opportunities of upward movement to these non-cadre officers posts, of Assistant Secretaries and above upto Additional Secretaries, in proportion to their permanent cadre strength of 14:1, the Government decided to fix an upper limit on the total number of non-cadre posts which can be held by the Private Secretaries category as 10 posts leaving the other 141 posts to the Section Officers. As there were already more than 10 non-

cadre officers from the Private Secretaries category, it was decided to restrict entry of Private Secretaries to the non-cadre officers posts till the existing number of non-cadre officers, from the Private Secretaries category, fell below 10. While the Private Secretaries, on promotion as Assistant Secretaries, were integrated with the other Assistant Secretaries and treated on par with them for further promotion to the posts of Deputy Secretaries and above, entry of persons from the Private Secretaries category, for promotion to Assistant Secretaries category, was restricted. While the impugned amendment is no doubt peculiar and, instead of the normal practice of prescribing a ratio or a quota or the total number of posts which may be held by persons from one of the feeder categories on promotion to a higher category, the total number of posts to be held by them in the non-cadre posts of Assistant Secretaries, Deputy Secretaries, Joint Secretaries and Additional Secretaries have been clubbed together and a maximum limit of 10 posts has been prescribed to be filled up from the Private Secretaries category, that, by itself, would not render the impugned amendment to the Rules u*ltra vires* Articles 14 and 16 of the Constitution of India. It is not for Courts/Tribunals to examine as to whether prescription of another criteria would have been more beneficial or not for that would, in effect, amount to sitting in judgment over the policy choice of the rule making authority. While another policy, as put across by the person challenging the validity of the rule, may indeed be more appealing, it would nonetheless not call for examination since the choice of policy is in the rule making authority's realm and not that of Courts/Tribunals. The reasons which weighed with the Government and the policy underlying the amendment to the

Rules, in G.O.Ms.No.397 dated 20.9.1999, is to provide equal opportunities to both the feeder categories of Section Officers and Private Secretaries, on the basis of their permanent cadre strength, for upward movement and promotion to the non-cadre posts of Assistant Secretaries, Deputy Secretaries, Joint Secretaries and Additional Secretaries. The amendment is neither unreasonable nor arbitrary. The Challenge to its validity on the ground that it is in violation of Articles 14 and 16 of the Constitution of India, must therefore fail.

The writ petitions are allowed and the order of the Administrative Tribunal in O.A.Nos.5698 and 5904 of 1999 dated 14.2.2000 is set aside. However, in the circumstances, without costs.

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B. PRAKASH RAO, J

Date: -08-2006

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RAMESH RANGANATHAN, J

Note: L.R. copy to be marked.
B/o
MRKR/ASP

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[1] (1995)2 SCC 745)
[2] (1967 SLR 753)
[3] 1998(6)SCC-741
[4] (1995)1SCC23
[5] (1999)3 SCC 384
[6] (2001) SCC 475
[7] (2003) 6 SCC 535

[8] AIR 1967 SC 1889
[9] AIR 1967 SC 52
[10] AIR 1974 (SC) 259
[11] AIR 1999 (SC) 647
[12] 1992 Supp.(1) SCC 548
[13] 1989(4) SCC 187
[14] 2000(9) SCC 572
[15] AIR 2000 SC 498
[16] AIR 1971 SC 2399
[17] 1973 (2) SCC 705
[18] 2001(4) ALD 153
[19] 2004(2) ALD 1 (Larger Bench)
[20] (1997)9SCC 509
[21] (2002) 4 SCC 510
[22] (1967) 2 SCR 29
[23] 1989 Supp (2) SCC 364
[24] 1993 Supp (4) SCC 473
[25] (1998) 2 SCC 198
[26] (2003) 3 SCC 541
[27] (2006)2 SCC 482
[28] 1981(4) SCC 130
[29] 1990(2) SCC 228
[30] (1975) 3 SCC 76
[31] (1991) 1 SCC 505
[32] (1982) 3 SCC 24
[33] (1981) 1 SCC 722
[34] (1974)4 SCC 3
[35] (1978)1 SCC 248
[36] (1979) 3 SCC 489
[37] (2002) 4 SCC 34
[38] (2002(2)SCALE 367
[39] AIR 1995 SC 2114
[40] (2000) 8 SCC 633
[41] (2002) 2 SCC 188
[42] 1996(10)SCC 304
[43] 2003(12)SCC 68

[44] 2006(3) SCC 434

[45] (1982) 3 SCC 191

[46] 1992 Supp (2) SCC 318

[47] AIR 1968 SC 647

[48] AIR 1990 SC A.P. 171

[49] 2004(8) SCC 579

[50] 2003(11) SCC 584

[51] 2004(3) SCC 75